

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

MONTY P. MILBOURNE,

Civ. No. 20-0012 (NLH)

Petitioner,

MEMORANDUM OPINION & ORDER

v.

RICHARD SMITH,

Respondent.

APPEARANCES:

Monty P. Milbourne
46305
Cumberland County Department of Corrections
54 West Broad St.
Bridgeton, NJ 08302
Petitioner Pro Se

HILLMAN, District Judge

WHEREAS, Monty P. Milbourne has filed a Petition for Writ of Habeas Corpus under 28 U.S.C. § 2241 alleging he has been confined in the Cumberland County Jail for 26 months without being indicted by a grand jury, see ECF No. 1; and

WHEREAS, Petitioner alleges he was arrested on November 4, 2017 and detained pursuant to Accusation No. 17002534, see id. at 6; and

WHEREAS, Petitioner alleges the prosecutor "forged" Indictment 18-01-00099 or 18-12-01117 by including "3 extra

charges" that were not part of Case 17002534, see id.;

WHEREAS, Rule 4 of the Rules Governing Section 2254 Proceedings (made applicable through Rule 1(b)) requires the Court to promptly examine the petition and to determine whether it should be summarily dismissed. "If the petition is not dismissed, the judge must order the respondent to file an answer, motion, or other response within a fixed time, or to take other action the judge may order." Id.; and

WHEREAS, Petitioner alleges Cumberland County has failed to indict him or bring him to trial in a time period consistent with his speedy trial rights. However, he also indicates the prosecutor's office provided him with two Indictments, 18-01-00099 and 18-12-01117. ECF No. 1 at 6. Plaintiff challenges their validity because no indictment was issued under case number 17002534 and the indictment contained more charges than he was originally charged with, see id. and

WHEREAS, it appears to the Court that the Cumberland County Prosecutor's Office did present the charges against Petitioner to a grand jury. However, in an abundance of caution because Petitioner did not provide any of the charging documents to the Court, the Court will exercise its authority under Rule 4 to order the Cumberland County Prosecutor's Office to provide the Court with copies of the referenced charging documents; and

WHEREAS, because Petitioner is a state pre-trial detainee,

the Court will instruct the Clerk's Office to remove the U.S. Attorney's Office from electronic notifications and to send a copy of the petition and this Order to the Cumberland County Prosecutor's Office,

THEREFORE, IT IS on this 24th day of January, 2020

ORDERED that the Clerk shall remove the U.S. Attorney's Office from electronic notifications in this matter; and it is further

ORDERED that the Clerk shall send a copy of the petition, ECF No. 1, and this Order to the Cumberland County Prosecutor's Office and the New Jersey Attorney General's Office; and it is further

ORDERED that the Cumberland County Prosecutor's Office shall file copies of charging documents 17002534, 18-01-00099, and 18-12-01117 with the Court within 21 days of this Order. The Office does not need to address the merits of the petition at this time; and it is finally

ORDERED that the Clerk shall serve a copy of this Order upon Petitioner by regular mail.

At Camden, New Jersey

s/ Noel L. Hillman
NOEL L. HILLMAN, U.S.D.J.